

Class I Ban Amendment

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 82
[FRL-]
Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rulemaking.

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SUMMARY: In this document EPA is promulgating regulations to amend the Class I Nonessential Products Ban published in the Federal Register of January 15, 1993, and promulgated under section 610(b) of the Clean Air Act, as amended. This action is being undertaken by EPA in order to exempt certain replacement parts that were placed into initial inventory prior to April 16, 1992. The substances affected by this proposed rulemaking include chlorofluorocarbons (CFCs). This action will provide relief for manufacturers, distributors, and retailers of replacement parts that were previously designed and manufactured for specific product models and that are no longer being produced.

EFFECTIVE DATE: This action will become effective on **[INSERT 60 DAYS FROM THE DATE OF PUBLICATION]** unless EPA is notified by **[INSERT 30 DAYS FROM THE DATE OF PUBLICATION]** that any person wishes to submit adverse comment. Should EPA receive such notice, EPA will publish one subsequent notice in the Federal Register to withdraw this final action and another notice proposing this action and requesting comments.

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A-91-39, Waterside Mall (Ground Floor) Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 in room M-1500. Dockets may be inspected from 8:30 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials. Those wishing to notify EPA of their intent to submit adverse comments on this rule should contact Cynthia Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Cynthia Newberg, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205-J), 401 M Street, SW., Washington, DC 20460. (202) 233-9729. The Stratospheric Ozone Information Hotline at 1-800-296-1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Class I Nonessential Products Ban
- II. Today's Revisions To The Class I Nonessential Products Ban
- III. Effective Dates
- IV. Summary of Supporting Analysis
 - A. Executive Order 12866
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I. Class I Nonessential Products Ban

Title VI of the Clean Air Act as amended in 1990 (the Act), divides ozone-depleting chemicals into two distinct classes. Class I is comprised of chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform. Class II is comprised of hydrochlorofluorocarbons (HCFCs). (See listing notice January 22, 1991; 56 FR 2420.) Section 610(b) requires EPA to promulgate regulations that "identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce." The statute requires that at a minimum, EPA must ban the sale and distribution of CFC-propelled plastic party streamers and noise horns, and restrict the sale and distribution of CFC-containing cleaning fluids for electronic and photographic equipment to commercial users. Final regulations implementing the Class I Nonessential Products Ban were published in the Federal Register on January 15, 1993 (58 FR 4768).

In developing regulations to implement the class I ban under Section 610(a),(b) and (c), EPA took into consideration the statutory prohibition required by Section 610(d) on products containing or manufactured with class II substances. Section 610(d) provides for a self-executing ban of certain products made with class II substances that becomes effective on January 1, 1994. Section 610(d) bans the sale or distribution, or offer for sale or distribution, in interstate commerce of "any aerosol product or other pressurized dispenser which contains a class II substance;" and "any plastic foam product which contains, or is manufactured with, a class II substance." Section 610(d) provides limited criteria for granting exemptions to the Class II Nonessential Products Ban. The Notice Of Proposed Rulemaking (NPRM) implementing the class II ban was published in the Federal Register on September 27, 1993 (58 FR 50463).

During the development of the class I ban, EPA was concerned about the potential of creating an environmentally adverse incentive through implementation of the statutory ban on use of class II substances in certain products on January 1, 1994, while permitting the use of the more harmful class I substances in the same products. Thus, the statutory prohibition in section 610(d) provided direction in choosing products on which to focus under section 610(b). Therefore, EPA considered those products for which the use of HCFCs would

be eliminated in determining which products to identify as nonessential under the class I ban.

Products Subject To The Class I Ban

In Section 82.66 of the final regulations implementing the class I ban, EPA banned the following products which release a class I substance that are identified as being nonessential:

- Any plastic party streamer or noise horn which is propelled by a chlorofluorocarbon, including but not limited to--
 - String confetti;
 - Marine safety horns;
 - Sporting event horns;
 - Personal safety horns;
 - Wall-mounted alarms used in factories or other work areas; and
 - Intruder alarms used in homes or cars.

EPA also restricted the sale of any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon, except for those sold or distributed to a commercial purchaser.

These products were specifically identified as nonessential in Section 610(b) of the Act putting manufacturers on notice of the upcoming ban. Therefore, the effective date for the implementation of the ban on the sale and distribution of the products listed above was February 16, 1993, thirty days after publication of the final class I ban.

In addition to these products, the final rule identifies and bans the following nonessential products based on EPA's review of various criteria specified in the Act:

- Any plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon (except flexible or packaging foam used in coaxial cable,) including but not limited to:
 - Open cell polyurethane flexible slabstock foam;
 - Open cell polyurethane flexible molded foam;
 - Open cell rigid polyurethane poured foam;
 - Closed cell extruded polystyrene sheet foam;
 - Closed cell polyethylene foam; and
 - Closed cell polypropylene foam.
- Any aerosol product or other pressurized dispenser, which contains a chlorofluorocarbon, including but not limited to, household, industrial, automotive and pesticide uses, except--
 - Medical devices listed in 21 CFR 2.125(e);

- Lubricants for pharmaceutical and tablet manufacture;
- Gauze bandage adhesives and adhesive removers;
- Topical anesthetic and vapocoolant products;
- Lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain CFC-11, CFC-12, or CFC-113 for solvent purposes, but which contain no other CFCs;
- Lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain CFC-11 or CFC-113, but which contain no other CFCs;
- Mold release agents used in the production of plastic and elastomeric materials, which contain CFC-11 or CFC-113, but which contain no other CFCs;
- Spinnerette lubricant/cleaning sprays used in the production of synthetic fibers, which contain CFC-114, but which contain no other CFCs;
- Containers of CFCs used as halogen ion sources in plasma etching;
- Document preservation sprays which contain CFC-113, but which contain no other CFCs; and
- Red pepper bear repellent sprays which contain CFC-113, but which contain no other CFCs.

While EPA based its determination of nonessential products in addition to those specified in the statute on a consideration of Section 610 in its entirety, EPA understands that many producers, distributors, and retailers may not have been able to foresee that their products would be considered under the class I ban until the publication of the NPRM on January 16, 1992. Therefore, the effective date for banning these products did not coincide with the effective date for banning products specifically referred to in Section 610(b). These additional products can no longer be sold or distributed or offered for sale or distribution in interstate commerce after January 17, 1994, one year from the publication of the final rule.

II. Today's Revisions to the Class I Nonessential Products Ban

The class I ban provided one year for manufacturers, distributors and retailers to eliminate inventories of nonessential products not specifically listed in the statute. EPA generally believes that sufficient time was provided under that rulemaking for manufacturers to alter production and for retailers to liquidate any remaining stocks of prohibited products. The Agency believes that the effect of the rulemaking was quite clear after the publication of the NPRM

on January 16, 1992. The NPRM provided notice to the producers, distributors, and retailers of aerosol and foam products that such products would be covered by the class I ban. In general, EPA believes that this period of time constitutes adequate notice for affected businesses. However, the Agency has been contacted by manufacturers and suppliers concerned with the treatment of existing inventories of replacement parts with long shelf lives made for specific makes or models of products. These are primarily cases where the environmental damage resulting from use of a class I substance in a product occurred during production of the products and the products were produced prior to the publication of the proposal for the class I ban.

Prior to the publication of the NPRM on January 16, 1992, manufacturers may not have known that future regulations would affect their existing inventories. Furthermore, in cases where the products were produced prior to the signing of the Clean Air Act Amendments in November of 1990, manufacturers may not have been able to predict what if any regulations affecting their inventories were imminent. However, in most cases, EPA believes that adequate time was provided in the class I ban rulemaking to allow for the elimination of most existing inventories prior to the established effective dates. The manufacturers of plastic party streamers and noise horns were on notice of the upcoming ban since the Clean Air Act Amendments were signed. The manufacturers of aerosol and foam products were on notice since the publication of the NPRM on January 16, 1992. However, EPA recently has learned of a few specific cases, where, because of very long shelf lives, no set length of time would be practical for the depletion of the existing inventories. EPA has reviewed numerous inquiries about existing inventories. In the situation of certain replacement parts, as described below, EPA believes that authority to provide relief does exist and that the relief is appropriate.

There are particular types of replacement parts that were manufactured and are currently stored solely for use in specific product models. Inventories often remain in existence for more than ten years. Manufacturers that produced replacement parts designed solely for a specific product model often manufactured the part at the same time the original product was manufactured, and had the replacement parts placed into inventory at that time, for use in the future. This situation generally occurs where product models change rapidly or drastically and it would not be practical to produce replacement parts at a later date.

For example, the American Automobile Manufacturers Association and the Association of International Automobile Manufacturers estimate that automobile manufacturers have well over one million separate part numbers and a significantly larger number of replacement parts in inventory. Often replacement parts are only fully compatible with one model. Many of the replacement parts used in automobiles have long shelf lives and are retained in inventory for many years. Routinely, during production of a vehicle, the manufacturer will order a "lifetime buy" of particular parts needed to service the vehicle line during the expected life of the model. For example, an automobile manufacturer may have authorized the production of surplus car seats during the production of a particular car model to allow for a lifetime supply of seats designed for that specific car model. The manufacturer created a lifetime supply of these seats to be used to replace seats damaged after the car had been purchased by the ultimate consumer.

Since those parts were produced to meet the specifications of a particular model, it may not be possible to manufacture new substitute parts at this time. The suppliers of the equipment needed to produce the part may no longer exist. If the equipment does still exist, it may have been greatly reconfigured. Even in cases where the supplier still exists and has the properly configured equipment to produce a new replacement part without CFCs, the cost of redesigning and producing the new replacement part to replace those in existing inventories may be prohibitively expensive. Therefore, the class I ban may have the unintended effect of causing specific products to be scrapped before the end of their useful lifetime due to the unavailability of replacements. This situation may be especially pronounced with replacement parts for automobiles and other durable goods that by their very nature have long product lifetimes.

In some cases, particularly for replacement parts that were originally placed in inventory prior to the signing of the Clean Air Act Amendments, the manufacturers may not have initially determined whether each replacement part was manufactured with, or contains, CFCs. In addition, the manufacturer may not have initially determined if each replacement part was stored in packaging material that was manufactured with, or contains, CFCs.

EPA believes that there are a limited number of replacement parts placed in inventories prior to April 16, 1992 that are still in use today that fit this description. Furthermore, the types of parts and packaging material

described above tend to be made with open cell foam products. In these cases, the environmental damage resulting from use of class I substances in such products would have occurred during the original production of the foam. Therefore, there would be no additional environmental benefit associated with the disuse of the replacement parts already in inventory.

Administrative creation of exemptions from statutory requirements are authorized in only limited circumstances, as outlined in Alabama Power Co., et al. v. Costle, et al., 636 F. 2d 323 (D.C. Cir 1979). Agencies can create such exemptions only where necessary, based on administrative feasibility or the de minimis nature of the exemption. Through this rule, EPA is granting limited exemptions from the class I ban based on the de minimis nature of emissions resulting from use of replacement products produced and already placed in initial inventory prior to April 16, 1992, the date 90 days after publication of the NPRM for the original class I ban. The exemption EPA is authorizing is limited to existing inventories where the original product and the replacement parts are no longer manufactured today, the replacement parts were expressly manufactured for that specific product make or model, and is based on the de minimis rationale.

EPA believes that the vast majority of replacement parts with long shelf lives that will be exempted by this action are parts that either contain an open cell foam component or are stored in open cell foam packaging material. As to this majority of affected products, the environmental damage associated with the class I substance in the product has already occurred at the time of manufacture. While there may also be a few closed cell products that meet the narrow definition of exempt products under this rule, emissions to the environment from use of these products, once manufactured, will be little or no different from the releases of class I substances from these products if removed from commerce and subsequently disposed of. Thus, where such replacement parts already exist, subjecting products to the ban will have a de minimis environmental impact. Due to these circumstances, EPA believes it is appropriate to allow such products to be used for their intended purpose prior to disposal.

EPA wishes to clarify that this exemption does not apply to all product components. Specifically, this exemption would not apply to those products that are fully compatible with a full range of products. For example, a reusable pressurized dispenser may be designed to be removed from one container and affixed to another container. In addition, in the aftermarket

for automotive parts, their are parts designed to be compatible with a full range of motor vehicles. These products would not be consistent with the intended meaning of the exemption for replacement parts outlined above.

This final action allows for continued sale of any replacement part meeting the criteria of this narrow exemption to be sold and distributed or offered for sale or distribution in interstate commerce after January 17, 1994. "Placed into initial inventory" within the meaning of this exemption means that the product has completed all manufacturing processes, is in all aspects ready for sale, and has been placed into the manufacturer's inventory.

April 16, 1992, the date prior to which products must have been placed into initial inventory to qualify for the exemption, represents ninety days after the class I NPRM was published in the Federal Register, allowing time for manufacturers to revise manufacturing processes to exclude class I substances. EPA believes that the publication of the January 16, 1992 NPRM provided sufficient notice of the Agency's intentions with respect to class I substances that manufacturers should have moved swiftly to alter their manufacturing processes. Therefore, any replacement parts that release class I substances into the environment during manufacture, use, storage, or disposal which are placed into initial inventory after April 16, 1992 are subject to the class I ban and cannot be sold or distributed, or offered for sale or distribution in interstate commerce after January 17, 1994.

To continue selling affected products after January 17, 1994, the manufacturer or distributor must be able to show that the product was manufactured and placed into initial inventory by April 16, 1992. Routine business records, such as shipping forms, lot numbers, manufacturer date stamps or codes, invoices, or the like, may be used to identify the date the product was placed into initial inventory. EPA believes these types of records are normally kept by manufacturers and distributors of products affected by today's action and that this final rule will not require the preparation of any additional records.

III. Effective Dates

This direct-final rulemaking will be effective **[INSERT 60 DAYS AFTER PUBLICATION]** unless EPA receives notice indicating that any person wishes to submit adverse comment. Should EPA receive such notice, EPA will withdraw this final action and propose such action with a request for public comment.

IV. Summary of supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

- (1) have an annual effect on the economy of \$100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 610. An examination of the impacts on small entities was discussed in the final class I ban (58 FR 4797). That final rule assessed the impact the ban may have on small entities and provided

examples of such impacts. In general, such impacts were found to be minimal. I certify that this amendment to the class I ban will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Because no informational collection requirements were implemented in the final class I regulations and none are being required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no Information Collection Request document has been prepared.

V. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the Federal Register. Under Section 307(b)(2), the requirements of this rule may not be challenged later in judicial proceedings brought to enforce those requirements.

VI. References

United Nations Environment Programme. Report of the Aerosol Products, Sterilants, Miscellaneous Uses and Carbon Tetrachloride Technical Options Committee (December 1991).

United Nations Environment Programme. Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (November 25, 1992).

United Nations Environment Programme. Scientific Assessment of Ozone Depletion: 1991 (December 17, 1991).

United Nations Environment Programme. Solvents, Coatings and Adhesives: Technical Options Committee Report (December, 1991).

United Nations Environment Programme. Third Meetings of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer: UNEP/OzL.Pro.3/L.4/Add.4 (Nairobi, 19-21 June, 1991).

United Nations Environment Programme. 1991 UNEP Flexible and Rigid Foams Technical Options Report (December 20, 1991).

United States Environmental Protection Agency. Alternative Formulations to Reduce CFC Use in U.S. Exempted and Excluded Aerosol Products (November 1989).

United States Environmental Protection Agency. Background Document on Aerosol and Pressurized Dispenser Products Containing Class II Substances (March 1993).

United States Environmental Protection Agency. Background Document on Identification of Nonessential Products that Release Class I Substances (November 1992).

United States Environmental Protection Agency. Essential Use Determination--Revised: Support Document Fully Halogenated Chlorofluoroalkanes (March 17, 1978).

United States Environmental Protection Agency. Handbook for Reducing and Eliminating Chlorofluorocarbons in Flexible Polyurethane Foams (April 1991).

United States Environmental Protection Agency. Manual of Practices to Reduce and Eliminate CFC-113 Use in the Electronics Industry (March, 1990).

United States Environmental Protection Agency. Response to Comments for Proposed Rule on Nonessential Products Made with Class I Substances (October 30, 1992).

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List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Clean Air Act Amendments of 1990, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Administrator

Date

Title 40, Code of Federal Regulations, Part 82, is amended to read as follows:

PART 82 - PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q

2. Subpart C is amended to read as follows:

Subpart C-Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances

Sec.

- 82.60 Purpose.
- 82.62 Definitions.
- 82.64 Prohibitions.
- 82.65 Temporary Exemptions.
- 82.66 Nonessential Class I Products and Exceptions.
- 82.68 Verification and Public Notice Requirements.
- 82.70 Nonessential Class II Products and Exceptions.

Subpart C-Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances

§ 82.60 Purpose.

The purpose of this subpart is to implement the requirements of sections 608 and 610 of the Clean Air Act as amended in 1990 on emission reductions and nonessential products.

§ 82.62 Definitions.

For purposes of this subpart:

- (a) Chlorofluorocarbon means any substance listed as Class I group I or Class I group III in 40 CFR Part 82, Appendix A to subpart A.
- (b) Commercial, when used to describe the purchaser of a product, means a person that uses the product in the purchaser's business or sells it to another person and has one of the following identification numbers:
 - (1) A federal employer identification number;
 - (2) A state sales tax exemption number;
 - (3) A local business license number; or
 - (4) A government contract number.

(c) Consumer, when used to describe a person taking action with regard to a product, means the ultimate purchaser, recipient or user of a product.

(d) Distributor, when used to describe a person taking action with regard to a product means:

(1) the seller of a product to a consumer or another distributor; or

(2) a person who sells or distributes that product in interstate commerce for export from the United States.

(e) Product means an item or category of items manufactured from raw or recycled materials which is used to perform a function or task.

(f) Release means to emit into the environment during the manufacture, use, storage or disposal of a product.

(g) Class II Substance means any substance designated as class II in 40 CFR Part 82, Appendix B to subpart A.

(h) Foam Insulation Product, when used to describe a product containing or consisting of plastic foam, means a product containing or consisting of the following types of foam:

(1) Closed cell rigid polyurethane foam;

(2) Closed cell rigid polystyrene boardstock foam;

(3) Closed cell rigid phenolic foam; and

(4) Closed cell rigid polyethylene foam when such foam is suitable in shape, thickness and design to be used as a product that provides thermal insulation around pipes used in heating, plumbing, refrigeration, or industrial process systems.

(i) Hydrochlorofluorocarbon means any substance listed as class II in 40 CFR Part 82, Appendix B to subpart A.

(j) Owner of a boat or marine vessel means any person who possesses a title, registration or other documentation that indicates that the person presenting this documentation is in possession of a marine vessel as defined in 33 CFR Part 177.

(K) Owner of a noncommercial aircraft means any person who possesses a title, registration or other documentation that indicates that the person presenting this documentation is in possession of a noncommercial aircraft.

§ 82.64 Prohibitions.

(a) Effective February 16, 1993, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in §82.66(a).

(b) Effective February 16, 1993, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products specified in §82.66(b) to a person who does not provide proof of being a commercial purchaser, as defined under §82.62.

(c) Effective January 17, 1994, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in §82.66(c) or §82.66(d) except as permitted under §82.65(g).

(d) Except as permitted under §82.65, effective January 1, 1994, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in §82.70(a) or §82.70(c).

(e) Except as permitted under §82.65, effective January 1, 1994, no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products specified in §82.70(b) to a person who does not provide proof of being a commercial purchaser, as defined under §82.62.

(f) Except as permitted under §82.65(d), effective January 1, 1996, no person may sell or distribute, or offer for sale or distribution, in interstate commerce any product identified as being nonessential in §82.70(c)(ii).

(g) It is a violation of this subpart to sell or distribute, or offer for sale or distribution, products effected by the provisions of §82.68 if the seller knew or should have known that the purchaser was purchasing the product for a prohibited application.

§ 82.65 Temporary Exemptions.

(a) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, at any time, any products specified as nonessential in §82.70 which are manufactured and placed into initial inventory by December 31, 1993.

(b) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, at any time, any products specified as nonessential in §82.70 which are manufactured and placed into initial inventory within the date 90 days after the effective date of any federal approvals required for product reformulation, where application for the required approval was timely and properly submitted to the approving federal agency prior to January 1, 1994.

(c)(1) Any person may sell or distribute or offer to sell or distribute, in interstate commerce, at any time, any products specified as nonessential in §82.70 which are manufactured and placed into initial inventory within 45 days

after the receipt of denial by any federal agency of an application for reformulation where initial application for the required approval was timely and properly submitted to the approving federal agency prior to January 1, 1994.

(2) If, within 45 days of receipt of a denial of an application for reformulation, a person submits a new viable application for federal approval of a reformulation, that person may continue to sell and distribute, or offer to sell and distribute until 45 days of denial of that application.

(d) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, at any time, any integral skin foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards, which are manufactured and placed into initial inventory prior to January 1, 1996.

(e) Any person selling or distributing, or offering to sell or distribute, any product specified in this section after January 1, 1994, or January 1, 1996 for subparagraph (d), or after January 17, 1994 for any product specified in subsection (g) of this section, must retain proof that such product was manufactured and placed into initial inventory before the relevant date specified in this section. Such proof may take the form of shipping forms, lot numbers, manufacturer date stamps, invoices or equivalent business records.

(f) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, any aircraft pesticide containing class I until an alternative aircraft pesticide containing class II is available in interstate commerce.

(g) Any person may sell or distribute, or offer to sell or distribute, in interstate commerce, at any time, any replacement part that was manufactured with, or contains a class I substance or was packaged in material that was manufactured with or contains a class I substances only if:

(i) The replacement part was manufactured for use in a single model of a product; and

(ii) The replacement part and product model are no longer manufactured; and

(iii) the replacement part was placed into initial inventory prior to April 16, 1992.

§ 82.66 Nonessential Class I Products and Exceptions.

The following products which release a Class I substance (as defined in 40 CFR Part 82, Appendix A to subpart A) are identified as being nonessential, and subject to the prohibitions specified under section 82.64--

(a) Any plastic party streamer or noise horn which is propelled by a chlorofluorocarbon, including but not limited to--

- (1) String confetti;
- (2) Marine safety horns;
- (3) Sporting event horns;
- (4) Personal safety horns;
- (5) Wall-mounted alarms used in factories or other work areas; and

(6) Intruder alarms used in homes or cars.

(b) Any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon:

- (1) Including but not limited to liquid packaging, solvent wipes, solvent sprays, and gas sprays; and
- (2) Except for those sold or distributed to a commercial purchaser.

(c) Any plastic flexible or packaging foam product which is manufactured with or contains a chlorofluorocarbon;

- (1) Including but not limited to:
 - (i) Open cell polyurethane flexible slabstock foam;
 - (ii) Open cell polyurethane flexible molded foam;
 - (iii) Open cell rigid polyurethane poured foam;
 - (iv) Closed cell extruded polystyrene sheet foam;
 - (v) Closed cell polyethylene foam; and
 - (vi) Closed cell polypropylene foam.

(2) Except--flexible or packaging foam used in coaxial cable

(d) Any aerosol product or other pressurized dispenser, other than those banned in §82.64(a) or §82.64(b), which contains a chlorofluorocarbon,

(1) including but not limited to household, industrial, automotive and pesticide uses,

(2) except--

- (i) Medical devices listed in 21 CFR Section 2.125(e);
- (ii) Lubricants for pharmaceutical and tablet

manufacture;

(iii) Gauze bandage adhesives and adhesive removers;

(iv) Topical anesthetic and vapocoolant products;

(v) Lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain CFC-11, CFC-12, or CFC-113 for solvent purposes, but which contain no other CFCs;

(vi) Lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain CFC-11 or CFC-113 as a solvent, but which contain no other CFCs;

(vii) Mold release agents used in the production of plastic and elastomeric materials, which contain CFC-11 or CFC-113 as a solvent, but which contain no other CFCs, and/or mold release agents that contain CFC-12 as a propellant, but which contain no other CFCs;

(viii) Spinnerette lubricant/cleaning sprays used in the production of synthetic fibers, which contain CFC-114 as a solvent, but which contain no other CFCs, and/or spinnerette lubricant/cleaning sprays which contain CFC-12 as a propellant, but which contain no other CFCs;

(ix) Containers of CFCs used as halogen ion sources in plasma etching;

(x) Document preservation sprays which contain CFC-113 as a solvent, but which contain no other CFCs, and/or document preservation sprays which contain CFC-12 as a propellant, but which contain no other CFCs, and which are used solely on thick books, books with coated or dense paper and tightly bound documents; and

(xi) Red pepper bear repellent sprays which contain CFC-113 as a solvent, but which contain no other CFCs.

§ 82.68 Verification and Public Notice Requirements.

(a) Effective February 16, 1993, any person who sells or distributes any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon must verify that the purchaser is a commercial entity as defined in §82.62. In order to verify that the purchaser is a commercial entity, the person who sells or distributes this product must request documentation that proves the purchaser's commercial status by containing one or more of the commercial identification numbers specified in §82.62 (b). The seller or distributor must have a reasonable basis for believing that the information presented by the purchaser is accurate.

(b) Effective February 16, 1993, any person who sells or distributes any cleaning fluid for electronic and photographic equipment which contains a chlorofluorocarbon must prominently display a sign where sales of such product occur which states: "It is a violation of federal law to sell, distribute, or offer to sell or distribute, any chlorofluorocarbon-containing cleaning fluid for electronic and photographic equipment to anyone who is not a commercial user of this product. The penalty for violating this prohibition can be up to \$25,000 per sale. Individuals purchasing such products must present proof of their commercial status in accordance with §82.68(a)."

(c) Effective January 1, 1994, any person who sells or distributes any aerosol or pressurized dispenser of cleaning fluid for electronic and photographic equipment which contains a class II substance must verify that the purchaser is a commercial entity as defined in §82.62(b). In order to verify that the purchaser is a commercial entity, the person who sells or distributes this product must request documentation that proves the purchaser's commercial status by containing one or more of the commercial identification numbers specified in §82.62(b).

(d) Effective January 1, 1994, any person who sells or distributes any aerosol or other pressurized dispenser of cleaning fluid for electronic and photographic equipment which contains a class II substance must prominently display a sign where sales of such product occur which states: "It is a violation of federal law to sell, distribute, or offer to sell or distribute, any aerosol hydrochlorofluorocarbon-containing cleaning fluid for electronic and photographic equipment to anyone who is not a commercial user of this product. The penalty for violating this prohibition can be up to \$25,000 per unit sold. Individuals purchasing such products must present proof of their commercial status in accordance with §82.68(c)."

(e) Effective January 1, 1994, in order to satisfy the requirements under §82.68 (b) and (d), any person who sells or distributes cleaning fluids for electronic and photographic equipment which contain a class I substance and those aerosol or pressurized dispensers of cleaning fluids which contain a class II substance, may prominently display one sign where sales of such products occur which states: "It is a violation of federal law to sell, distribute, or offer to sell or distribute, any chlorofluorocarbon-containing cleaning fluid for electronic and photographic equipment or aerosol hydrochlorofluorocarbon-containing cleaning fluid for electronic and photographic equipment to anyone who is not a commercial user of this product. The penalty for violating this prohibition can be up to \$25,000 per unit sold. Individuals purchasing such products must present proof of their commercial status in accordance with 40 CFR 82.68(a) or 82.68(c)."

(f) Effective January 1, 1994, any person who sells or distributes any portable fire extinguisher containing a class II substance must prominently display a sign where sales of such products occur; or in cases where the purchaser does not physically come in contact with the point of sale, written notification must be given. This notification must state: "It

is a violation of federal law to sell portable fire extinguishers containing hydrochlorofluorocarbons to anyone, except for use in applications where necessary to extinguish fire efficiently without irreparably damaging the equipment or area being protected or where the use of other alternatives can cause a hazard to persons in the area. The penalty for violating this prohibition can be up to \$25,000 per unit sold. Individuals purchasing such products must present proof of their commercial status in accordance with 40 CFR 82.68(a), or of ownership of a marine vessel or boat in accordance with 40 CFR 82.62(j), or of ownership of a noncommercial aircraft in accordance with 40 CFR 82.62(k)." Written notification may be placed on sales brochures, order forms, invoices and the like.

(g) Effective January 1, 1994, any person who sells or distributes any portable fire extinguisher which contains a class II substance must verify that the purchaser is a commercial entity as defined in §82.62(b) or is the owner of a marine vessel or boat in accordance with §82.62(j) or the owner of a noncommercial aircraft in accordance with §82.62(k). In order to verify that the purchaser is a commercial entity, the person who sells or distributes this product must be presented with documentation that proves the purchaser's commercial status by containing one or more of the commercial identification numbers specified in §82.62(b). In order to verify that the purchaser is the owner of a marine vessel or boat, the person who sells or distributes this product must be presented with documentation specified in §82.62(j) that proves the purchaser's status as the owner of a marine vessel or boat. In order to verify that the purchaser is in ownership of a noncommercial aircraft, the person who sells or distributes this product must be presented with documentation specified in §82.62(k) that proves the purchaser's status as the owner of a noncommercial aircraft by containing one or more of the identification information specified in §82.62(k). The seller or distributor must have a reasonable basis for believing that the information presented by the purchaser is accurate.

(h) Effective January 1, 1994, any person who sells or distributes any mold release agents containing a class II substance as a propellant must provide written notification to the purchaser prior to the sale that "It is a violation of federal law to sell mold release agents containing hydrochlorofluorocarbons as propellants to anyone, except for use in applications where no other alternative except a class I substance is available. The penalty for violating this

prohibition can be up to \$25,000 per unit sold." Written notification may be placed on sales brochures, order forms, invoices and the like.

(i) Effective January 1, 1994, any person who sells or distributes any wasp and hornet spray containing a class II substance must provide written notification to the purchaser prior to the sale that "it is a violation of federal law to sell or distribute wasp and hornet sprays containing hydrochlorofluorocarbons as solvents to anyone, except for use near high-tension power lines where no other alternative except a class I substance is available. The penalty for violating this prohibition can be up to \$25,000 per unit sold." Written notification may be placed on sales brochures, order forms, invoices and the like.

§ 82.70 Nonessential Class II Products and Exceptions

The following products which release a class II substance (as designated as class II in 40 CFR part 82, Appendix B to subpart A) are identified as being nonessential and the sale or distribution of such products is prohibited under section 82.64(d),(e), or (f) --

(a) Any aerosol product or other pressurized dispenser which contains a class II substance:

(1) Including but not limited to household, industrial, automotive and pesticide uses;

(2) Except--

(i) Medical devices listed in 21 CFR 2.125(e);

(ii) Lubricants, coatings or cleaning fluids for electrical or electronic equipment, which contain class II substances for solvent purposes, but which contain no other class II substances;

(iii) Lubricants, coatings or cleaning fluids used for aircraft maintenance, which contain class II substances for solvent purposes but which contain no other class II substances;

(iv) Mold release agents used in the production of plastic and elastomeric materials, which contain class II substances for solvent purposes but which contain no other class II substances, and/or mold release agents that contain HCFC-22 as a propellant where evidence of good faith efforts to secure alternatives indicates that, other than a class I substance, there are no suitable alternatives;

(v) Spinnerette lubricants/cleaning sprays used in the production of synthetic fibers, which contain

class II substances for solvent purposes and/or contain class II substances for propellant purposes;
(vi) Document preservation sprays which contain HCFC-141b as a solvent, but which contain no other class II substance; and/or which contain HCFC-22 as a propellant, but which contain no other class II substance and which are used solely on thick books, books with coated, dense or paper and tightly bound documents;

(vii) Portable fire extinguishing equipment sold to commercial users, owners of marine vessels or boats, and owners of noncommercial aircraft that contains a class II substance as a fire extinguishant where evidence of good faith efforts to secure alternatives indicate that, other than a class I substance, there are no suitable alternatives; and
(viii) Wasp and hornet sprays for use near high-tension power lines that contain a class II substance for solvent purposes only, but which contain no other class II substances.

(b) Any aerosol or pressurized dispenser cleaning fluid for electronic and photographic equipment which contains a class II substance, except for those sold or distributed to a commercial purchaser.

(c) Any plastic foam product which contains, or is manufactured with, a class II substance,

(1) Including but not limited to household, industrial, automotive and pesticide uses,

(2) Except--

(i) Any foam insulation product, as defined in §82.62(h);
and

(ii) Integral skin foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards until January 1, 1996, after which date such products are identified as nonessential and may only be sold or distributed or offered for sale or distribution in interstate commerce in accordance with §82.65(d).